



ABAC Adjudication Panel Determination No 69/24

Product: Tradie Beer
Company: Tradie Brands
Media: Television – Free to Air
Date of decision: 30 May 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 29 April 2024 in relation to advertising for Tradie Beer (“the product”) by Tradie Brands (“the Company”) on free-to-air television.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
 - (a) Commonwealth and State laws:
 - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
 - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
 - State liquor licensing laws – which regulate the retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC Code”) – which is an alcohol-specific code of good marketing practice;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
 - Outdoor Media Association Code of Ethics and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meet the standards contained in the ABAC.
4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 29 April 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of

materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.



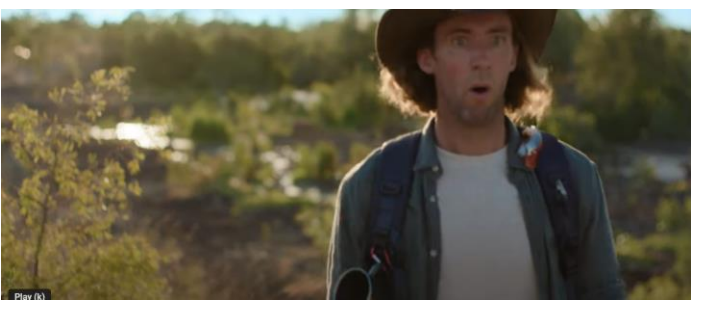
Pre-vetting Advice




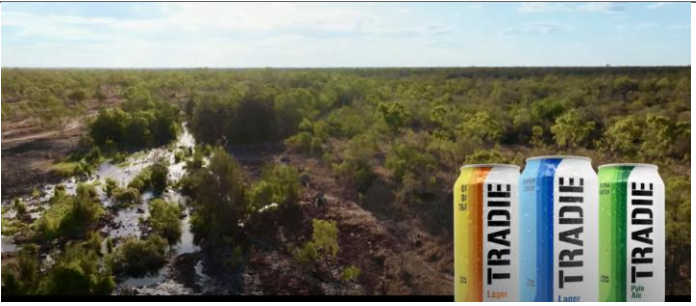
9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was obtained for the marketing (Approval Number 7255).

The Marketing

10. The complaint relates to marketing shown on free-to-air television:

<https://www.youtube.com/watch?v=M4bOtkEWLd0>

<p>The television ad is accompanied by Holiday in Havana by Hugh Cortley & Musi Silvio.</p> <p>It commences with footage of a man sitting by a body of water. He picks up a can of Tradie Beer, opens it and starts drinking, following which he expresses “aaahhhh”.</p>	 A man with long hair, wearing a light-colored shirt and shorts, is sitting on a log by a waterfall. He is holding a blue can of Tradie Beer and drinking from it. The background shows a large waterfall cascading into a pool of water.
<p>A man sitting fishing elsewhere responds to hearing “aaahhh”, as does a man walking.</p>	  The top image shows a man in a red shirt fishing in a river surrounded by lush green trees. The bottom image shows a man with long hair and a hat, wearing a denim jacket, looking surprised or reacting to something off-camera.

<p>The men are then shown running what is portrayed as being a long distance, until they reach the original man.</p>	
<p>An esky is opened, to show three different types of Tradie drinks.</p>	
<p>All three men are shown opening and drinking from a can of Tradie.</p> <p>They are portrayed as laughing and talking.</p>	
<p>The ad closes with a distance shot of the environment, with pictures of the three cans in the corner.</p>	

Complaint

11. The complainant objects to the marketing as follows:

- [The ad shows] *men fishing solemnly, they hear the satisfied sound of someone drinking beer (this is very obvious), they then begin running. Men are then seen happily drinking the beer.*
- *This advertisement shows a difference in mood for the consumers.*

The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:
 - (c)(i) suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment.

The Company Response

13. The Company responded to the complaint by email on 30 April 2024. Its primary comment was:
 - The adverts do not show an improvement of mood after consumption per previous findings.

The Panel's View

14. Tradie beer entered the Australian alcohol market in October 2023 as an extension of the Tradie range of clothing and other products. The initial promotion of the beer has involved three personalities namely Essendon AFL player Sam Draper and professional surfers Jackson Baker and Matt Wilkinson. The complaint relates to a video showing the three men.
15. The video shows the three men fishing in an inland setting. One of the men takes a sip of the beer and exclaims with a loud 'Ahhh' sound. This is heard by the other two men who react by running towards the sound and then the three men each are seen consuming the product.
16. The complainant takes the video as suggesting that the product leads to a change in mood. Part 3 (c)(i) of the Code provides that an alcohol marketing communication must not suggest that the consumption or presence of alcohol may cause or contribute to an improvement in mood or environment.
17. The assessment of the consistency of a marketing communication with a Code standard is taken from the probable understanding of the marketing item by a reasonable person. This means that the values, opinions and life experience shared by most members of the community is the benchmark.
18. The Company responded to the complaint but did not submit any argument as to whether the video should be regarded as consistent with the Code standard. The Company did allude to a previous Panel Determination 173/23, which found a different video of the same three men on the fishing trip did not breach the Code standard.
19. Each item of marketing must be assessed on its own merits and the fact that a different video was not a breach of the standard does not mean the current

video cannot be inconsistent with the Code. While the two videos are of the same camping and fishing trip, the scenes depicted are quite distinct.

20. The key concept in the Part 3 (c)(i) standard is causation. It is permitted to depict alcohol use as enjoyable but it cannot be suggested that alcohol improves a mood, from say sad to happy.
21. On balance, the Panel does not believe the video breaches the Code standard. While the two men who respond to the 'Ahhh' sound are shown as interested and enthusiastic to get back to camp to share in a beer, a reasonable person would probably not understand that their mood has been improved by the use of the product. It was noted:
 - Firstly, the men are shown as relaxed (not sombre) and this mood does not improve as such.
 - Secondly the men are responding to the sound and not the presence or use of the product.
 - Finally, a reasonable person would take the video as being exaggerated in terms of the very loud 'Ahhh' sound to the two other men scurrying to get back to camp and not a serious depiction of likely behaviour.
22. The complaint is dismissed.